

APPEAL NO. 023006
FILED JANUARY 9, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on November 13, 2002. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the third quarter, from August 3 through November 2, 2002. The claimant appealed on sufficiency of the evidence grounds and the respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative rule requirements for SIBs. At issue in this case is whether the claimant met the good faith job search requirement of Section 408.142(a)(4) by complying with Rules 130.102(d)(2) and 130.102(d)(4). The parties stipulated that the claimant sustained a compensable injury on _____; that she reached maximum medical improvement with an impairment rating of 15% or greater; that she has not commuted any portion of her impairment income benefits; and that the qualifying period for the third quarter of SIBs is from April 21 through July 20, 2002. The claimant based her request for entitlement to SIBs for the third quarter on the alternative assertions that she participated in a vocational rehabilitation program with the Texas Rehabilitation Commission (TRC) and/or had a total inability to work.

Rule 130.102(d)(2) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been enrolled in, and satisfactorily participated in, a full-time vocational rehabilitation program sponsored by the TRC during the qualifying period. The hearing officer was not persuaded by the evidence that the claimant participated in a vocational rehabilitation program and he wrote in the Statement of the Evidence that "the claimant was not actually enrolled and participating in vocational retraining until August 20, 2002, after the end of the qualifying period involved here." The evidence sufficiently supports the hearing officer's determination that during the qualifying period for the third quarter of SIBs, the claimant was not participating in any TRC-sponsored vocation rehabilitation program.

Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The hearing officer was not persuaded that the claimant's treating doctor

specifically explained how the injury causes a total inability to work. The hearing officer noted in the Statement of the Evidence that the claimant's treating doctor failed to provide an explanation on "how the compensable injury prevents the claimant from performing even part-time, sedentary work." Also, the hearing officer was not persuaded that the claimant had a total inability to work since "...an examination by a TRC-referred doctor in April 2002 indicates essentially that the claimant is able to perform at least sedentary level activities...." The evidence sufficiently supports the hearing officer's determination that, during the qualifying period for the third quarter, the claimant had some ability to work, and thus did not make a good faith effort to obtain employment commensurate with her ability.

After review of the record before us, and the complained-of determinations, we have concluded that there is sufficient factual and legal support for the hearing officer's decision. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Terri Kay Oliver
Appeals Judge